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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,154	10/23/2003	Niels Diffrient	0007049	1662
826	7590	03/14/2008		
ALSTON & BIRD LLP			EXAMINER	
BANK OF AMERICA PLAZA			BARFIELD, ANTHONY DERRELL	
101 SOUTH TRYON STREET, SUITE 4000				
CHARLOTTE, NC 28280-4000			ART UNIT	PAPER NUMBER
			3636	
			MAIL DATE	DELIVERY MODE
			03/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/693,154	DIFFRIENT, NIELS
	Examiner	Art Unit
	Anthony D. Barfield	3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 December 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7, 10-11, 13-33 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1, 4-7 and 11 is/are allowed.
- 6) Claim(s) 1-3, 8-10, 12-21, 24 and 26-33 is/are rejected.
- 7) Claim(s) 22, 23 and 25 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-21,26-27,31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Zegeer. Zegeer shows the use of two armrests (40) at least two substantially parallel arms (55,60) having a first end pivotally connected to the armrest and at least two ends movably engaged with a back support (22) via a positioning means (41). The positioning means allows the second ends of armrests to be selectively engaged with the back support in order to permit the armrest to move up or downward as well as allow the armrest to rotate inherently within an arc of 45 degrees.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3,13,16,18-19,29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rye. Rye shows the use of an armrest (106) having a distal end and a medial end whereby the distal ends moves upward and downward to a desired vertical position along with a locking

mechanism (110). Consequently, the method steps as recited would have been incorporated within the use of the invention as taught by Rye.

Claims 10,14-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz et al. in view of Spiegelhoff. Schwartz et al shows the use of an office chair (,t2) on a movable base having a hollow bracket (58) via a cavity therein (50). The bracket can inherently be mounted and "selectively fixed" at six inches above the plane of a top of a seat of the chair. Schwartz et al., shows all of the teachings of the claimed invention except the use of a parallel linkage arms mounted between a back support and an armrest body. Spiegelhoff shows the use of an armrest support arm (6) mounted on first and second linkage arms pivotally connected to a back support. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the chair of Schwartz et al., with the parallel arm/linkage mechanism as taught Spiegelhoff in order to allow for a quick and easy armrest adjustment.

Claims 24 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zegeer. Zegeer shows all of the teachings of the claimed invention except the use of at least two or four ends connected to the back support. It would have been an obvious matter of design choice to modify the armrest of Zegeer to allow either two ends or four ends to be movably engage with the backrest as an obvious multiplicity of parts (in using multiple positioning means).

Response to Arguments

Applicant's arguments with respect to claims 2-3,13, and 18-19 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Spiegelhoff shows the use a parallel arm/linkage mechanism in order to allow for a quicker and easier armrest adjustment.

Allowable Subject Matter

Claims 1,4-7,11 are allowed over the prior art made of record.

Claims 22-23, 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3636

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D. Barfield whose telephone number is 571-272-6852. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Anthony D Barfield/
Primary Examiner, Art Unit 3636

adb
March 2, 2008